

1 NANCY K LAYNE
2 g/o 95580 South Coos River Lane
3 Coos Bay, Oregon
4 Plaintiff/Creditor

5 **UNITED STATES BANKRUPTCY COURT**
6 **FOR THE SOUTHERN DISTRICT OF NEW YORK**

7 In re:
8 RESIDENTIAL CAPITAL, LLC, et al.,
9 Debtors.

Case No. 12-12032
Docket No. 3294 filed March 21, 2013
Claim No. 292

10 LINTON C. LAYNE
11 NANCY K. LAYNE
12 Plaintiffs/Creditors

PLAINTIFF'S OBJECTION TO DEBTORS'
OBJECTION

MOTION TO POSTPONE

13 vs.

MOTION TO REMAND TO THE STATE OF
OREGON

14 GMAC MORTGAGE, LLC;
15 RESIDENTIAL CAPITAL, LLC,
16 Defendants.

17 COME NOW the Plaintiffs/Creditors above-named, and hereby file PLAINTIFFS
18 RESPONSE to DEFENDANTS OBJECTION and PLAINTIFF MOTION TO REMAND
19 THIS CASE TO the STATE of OREGON being in regards to determine the True
20 parties in Interest, the Beneficial Interest holders and Secured Status, having been
21 formed ab initio upon **real property** and thusly offering this Hon. Court evidence in
22 Fact of parties.

23
24 The Plaintiff asserts the subject-matter of identifying the entity-distinction of
25 the Defendants a paramount consideration and their entitlement or claims to
26 entitlement or Interest and Avoid Liens of SIERRA PACIFIC MORTGAGE
27 COMPANY, INC. (original lienholder), GMAC MORTGAGE, LLC (servicer), Ocwen
28

1 Loan Servicing, LLC Residential Capital, LLC (holding company of GMAC),
2 pursuant to 11 U.S.C. §506(a) and §1322.
3

4 Plaintiffs asserts: the subject-matter before this Hon. Court is positioned
5 adversarial; and is now ripe being convoluted in fact; and
6

7 With respects to this Court, the interests in question, however formed, and being
8 for claims, presented for contest between the parties, is being derived ab initio upon
9 **real property** being located within the State of Oregon; and
10

11 For the merit of claim(s) being contingent on identification of parties, and their
12 respective right(s) to claims, is to the lawful beneficial interests having been
13 formed by documentation derived through legal and proper title assignments; and
14 Any ruling in which removes Plaintiff security and interest or a ruling, in which by
15 proximate cause, may result in Plaintiff loss of real property, and the interests
16 therein formed, or otherwise by a ruling in which adversely creates additional
17 economic damage without the Hon. Court having proof(s) in fact, being by contrast,
18 mere Defendant suggestion or attorney brief, or attorney testifying on behalf of
19 client, which no evidences suggests being in possession of proper title assignment,
20 including and not being limited to Defendant producing a Chain of Title and Chain of
21 Custody of the Promissory Note(s) being both a matter of law and an operation in
22 law, thusly being legal merits formed under the substantive and procedural
23 elements of the law for proof of entitlement, and without such proof(s) by the
24 Defendant and Defendant seeking award based upon insufficient fact and without
25 producing proof(s) may constitute a miscarriage of the law; and
26
27
28

1 Plaintiff asserts this Court is lacking proper documentation being for fact of
2 entitlement and enforcement, collections or discharges, and the parties of claims
3 **must-be identified as being legally entitled; and**

4
5 Plaintiff will serve all entities of GMAC MORTGAGE, LLC that has filed a
6 Chapter 11 Bankruptcy, Case No: 12-2032, Northern District of New York. The
7 GMAC MORTGAGE, LLC case along with numerous other cases, has been
8 consolidated under the case of Residential Capital, LLC, Case No: 12-2020,
9 Northern District of New York. Upon information and belief, GMAC MORTGAGE,
10 LLC is a subsidiary of Residential Capital, LLC. The Automatic Stay regarding
11 actions such as this one was lifted by a Court Order entered on 7/3/2012 at Docket
12 #774 in the consolidated case.
13

14 **FACTS**

15
16 Defendants filed a Chapter 13 bankruptcy on January 26, 2012.
17 GMAC MORTGAGE, LLC can be served with a Summons and Complaint c/o David
18 Applegate, CEO, 4 Walnut Grove Drive, Horsham, PA 19044. GMAC MORTGAGE,
19 LLC is, upon information and belief, owned by Residential Capital, LLC which can be
20 served on James Whitlinger, CFO, Residential Capital, LLC, One Meridian Crossings,
21 Minneapolis, MN 55423; and on Stefan W. Engelhardt, Esq., Morrison and Forester
22 LLP, 1290 Avenue of the Americas, New York, NY 10104, attorney for Residential
23 Capital and GMAC MORTGAGE, LLC in the pending bankruptcy proceedings.
24
25 On the date of filing, Plaintiffs owned and claimed as their homestead exemption
26 the real property located at 2186 E Main Street, Hillsboro Oregon 97420
27
28 (hereinafter the "Property"); and

1 GMAC claimed an interest in the subject property by including the property in the
2 cause before the court, yet in the Defendants December 20, 2013 (see document #
3 6168 # 6) response to the court, GMAC has now claimed that "In fact, neither the
4 Debtors nor the Liquidating Trust have any interest in a mortgage or associated
5 loan related to the Property; are the Defendants actions intending to over claim
6 interest to this court?; and
7

8 There is no evidence in the Land Records of the State of Oregon that the subject
9 property is in DEFAULT; and
10

11 **LEGAL ARGUMENT**

12 According to Lauren Graham Delehey, as Chief Litigation Counsel of ResCap
13 and now with the Liquidating Trust, per DECLARATION submitted as Exhibit 1 of
14 the December 20, 2013 filing, "Accordingly, as far as I have been able to ascertain,
15 as of the date hereof, neither the Debtors nor the Liquidating Trust have any
16 interest in a junior mortgage or associated note related to the Property." there is no
17 evidence including first hand knowledge of the Deed of Trust nor the Note; and
18

19 If Ms. Delehey is saying that she has assisted in the execution of documents
20 for the of Deed of Trust and the Note for the subject property then I would agree
21 that she has the capacity to submit an affidavit, however Ms. Delehey has not
22 provided any such evidence; and
23

24 a) "It is well established that statements of counsel of alleged facts are not
25 sufficient to establish facts or evidence in the case for its client. " *Trinsey v.*
26 *Pagliari*, 229 F. Supp. 647, 649 (D.C. Pa. 1964); and
27
28

1 The Plaintiffs are a real party in interest because they are the only ones that
2 have come forth with known interest listed in Washington County, Oregon that
3 actually signed the document for the real property; and

4 The Plaintiffs are a real party in interest as evidenced by the Bank
5 statements of Nancy Layne where by monetary payments were sent to
6 Homecomings Financial, LLC, and then to GMAC Mortgage and then to
7 Loanservicing, all of who have had an opportunity to produce their records of
8 interest and have not done so. See Exhibit A; and

9
10 If there is going to be any point in time where ruling from this court that has
11 a proximate cause to the Plaintiffs losing their interest in the property and the
12 Plaintiffs actually losing the possession of the property, do you believe that the
13 court should know whom has right to the Note to accept or enforce, that and
14 attorneys briefs is not sufficient, as being evidence in fact. And the only way this is
15 going to be sorted out is in the proper venue; and

16
17 This case has become so convoluted that until this court knows who the real
18 parties of interest are, this court may potentially be granting liberties to parties
19 that should actually be held accountable for their transgressions; and

20
21 In Fact, neither the Debtors nor the Liquidating Trust have provided any
22 evidence that "The Property is subject to a second lien mortgage, however, in favor
23 of U.S. Bank as trustee for the SACO I 2006-9 residential mortgage trust" (See
24 Delehey Decl. ¶ 4) is in this trust as an original species of record that indicates a
25 Debt Obligation, and Plaintiffs believe that no such evidence exists; and
26
27
28

1 The Plaintiff is not claiming that there are not parties that may be owed, the
2 Defendants lack of evidence supports discrepancies in the proper documentation of
3 both the Deed of Trust and the Note, as a defective Chain of Title in State of Oregon
4 where all land records are to be held; and

5
6 If this court proceeds without this matter being settled prior, it could slander
7 the subject property and creating damage that may not be corrected; Oregon
8 Revised Statutes 105.605 gives rise to an adversary possession of subject property;
9 and

10
11 Request is made to remand this cause to the State courts for there to be a
12 determination of whom actually has ownership rights per a Chain of Title and
13 Chain of Custody of the Promissory Note(s), for the interest in the subject property
14 according to the State of Oregon, County of Coos where all land records are to be
15 held.

16
17 **WHEREFORE**, Plaintiffs pray that this Court enter an order that:

18 A. Postpone this case until such time that the parties have been identified for their
19 security interest, or beneficial interest in the Chain of Title and Chain of Custody of the
20 Promissory Note in the State of Oregon.

21 B. After such land records are identified and corrected with all interest and titles showing
22 then the Bankruptcy case can be settled.

23
24 DATED: January 17, 2014

25 //

26 //

27 
28 Nancy Kay Layne
Plaintiff / Creditor

ORDER

In re:
RESIDENTIAL CAPITAL, LLC, et al.,
Debtors.

Case No. 12-12032
Docket No. 3294 filed March 21, 2013
Claim No. 292

**[PROPOSED] CHANGE OF VENUE
ORDER**

LINTON C. LAYNE
NANCY K. LAYNE
Plaintiffs/Creditors
vs.
GMAC MORTGAGE, LLC;
RESIDENTIAL CAPITAL, LLC,
Defendants.

After this matter being heard, IT IS HEREBY ORDERED THAT:

CHANGE OF VENUE to the State of Oregon, Washington County for the Chain of Title and Chain of Custody of the Promissory Note(s) be completed for land ownership records.

IT IS SO ORDERED.

DATE ____ of ____ 2014.

ORDER

In re:
RESIDENTIAL CAPITAL, LLC, et al.,
Debtors.

) Case No. 12-12032
Docket No. 3294 filed March 21, 2013
Claim No. 292

[PROPOSED] POSTPONEMENT ORDER

LINTON C. LAYNE
NANCY K. LAYNE
Plaintiffs/Creditors
vs.

GMAC MORTGAGE, LLC;
RESIDENTIAL CAPITAL, LLC,
Defendants.

After this matter being heard, IT IS HEREBY ORDERED THAT:

This Court shall postpone this cause until the State of Oregon, Washington County has properly identified all interest holders for Chain of Title and Chain of Custody of the Promissory Note(s) of the land ownership records.

IT IS SO ORDERED.

DATE ____ of ____ 2014.